IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

JUDGES ORDER NO.146 of 2007

IN

SUIT NO. 1809 of 2006

Sarvadaman M. Doshi and Ors. .. Plaintiffs

V/s

Deepzk M. Doshi and Ors. ..Defendants

Mr.M.S.Doctor i/b Bachubhai Munim and Co. for Plaintiff

Ms Bindi Dave i/b M/s Wadia Ghandy & Co. for defendant no.1 to 5.

CORAM:S.R.SATHE,J.

DATED:4th May 2007

P.C.:-

1. The original defendant no.3 in suit No.1809 of 2006 has moved this court for issuing Judges Order directing the Income Tax Department to produce the original certified true copies of the documents in respect of Khopoli Unit/Division of Echjay Electronics Pvt.Ltd. having its administrative office at villag Honad, Taluka Khopoli, District Raigad being plaintiff no. 9 company for the year ending March 31st 2006 and March 31, 2007

and some other documents pertaining to the Income tax in respect of the parties to the suit.

2. Brief facts giving rise for this Judges Order are as under :

. the plaintiffs 1 to 8 and defendants 1 to 8 are the members of the family of late Mansukhlal Doshi. Plaintiff nos. 9 to 12 and defendant nos. 9 to 15 are the companies and/or partners known and/or controlled by the above mentioned members of the family. According to the plaintiffs family settlement took place between all the said members on 28-5-2005 and as a result of the same the defendant nos.1 to 8 seized to have any right, title or interest in respect of 1,28,967 equity shares of Echjay Forgings Pvt. Ltd. standing in the name of defendant nos.1 to 8 on the registered of members of Echjay Forgings Pvt. Ltd. Even then the defendants were leaving their name in respect of the shares, hence plaintiffs filed the present suit for enforcement of an agreement of family settlement dated 2-8-2005 and prayed for declaration that defendant nos.1 to 8 are not having any right,title or interest in respect of the above shares and on the contrary the plaintiffs are having right in respect of the said shares.

3. During the pendecny of the suit plaintiff also filed notice of motion seeking some interim relief.While answering the said Notice of Motion the defendants also

filed certain affidavits. During the pendency of this suit, defendant no.3, plaintiff no.1 made certain declarations before the Income tax officers when additional Commissioner Income tax one Mr.Sandeep Kumar on 20-9-2006 along with the Assistant Commissioner of income tax Ward 10(3) Mumbai conducted a surrey on plaintiff no.9 company at his Khopoli unit as well as Kanjur Marg unit. Naturally, the defendant no.3 called upon the plaintiff to give details about the said declaration and other return supplied to Income Tax Department. However the plaintiff refused to give the same. The defendant no.3 therefore submitted necessary application to the Income Tax Department in the prescribed form. In spite of the same the Income tax Department neither supplied the information nor refused to give the said information and copies of the necessary documents. Hence the defendant no.3 has prayed by this Judges order that the Income Tax Department be directed to produce the said document as the same are necessary for the present suit.

4. The Judges Order is strenuously opposed by the plaintiff on the ground that the same is premature. According to the plaintiff the defendant no.3 has not even filed written statement naturally issues are also not settled and under such circumstances it is not known as to whether the documents called from the Income Tax Department are relevant for the suit or not. The learned Advocate for the plaintiff on relying of order 16 Rule 1

of C.P.C. submitted that the court can issue witness summons for documents as prayed but that can be done only if the said document is relevant and the stage of issuing such summons or direction will arise only when the issues are settled. As against this the learned Advocate for the defendant no.3 strenuously argued before me that having regard to the provisions of Section 30 of CPC and the provisions of Order 11 of CPC this court has get every power to issue a direction as prayed.

5. It would be worthwhile to see the relevant provisions.

> Section 30: Power to Order discovery and the like - Subject to such conditions and limitations as may be prescribed, the Court may, at any time either of its own motion or on the application of any party :-
>
> a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;
>
> b) issue summonses to persons whose attendance is required either to give

evidence or to produce documents or such other objects as aforesaid;

c) order any fact to be proved by affidavit.

Order XVI:SUMMONING AND ATTENDANCE OF WITNESSES :

1. List of witnesses and summons to witnesses - 1) on or before such date as the Court may appoint, and not later than fifteen days after the date on which the issues are settled, the parties shall present in Court a list of witnesses whom they propose to call either to give evidence or to produce documents and obtain summonses to such persons for their attendance in Court.

6. From the averments in the plaint it is very clear that the suit is in respect of disputes arising out of family arrangement. The said family arrangement pertains to the various family business which include the business of defendant no.9 company in which admittedly the present defendants were certainly having shares atleast upto a particular date. Of course whether their right, title and interest in the said shares come to an end or not is a matter in dispute. Naturally, if any declaration is made by the plaintiff in connection with the income of

the said company or in respect of any of the units of the said company the defendant is interested in the same so when defendant came to know that plaintiff has made certain declaration regarding the Income of the said company the defendant has asked the plaintiff to supply information about the same. The said information is in fact essential for the defendant for filing written statement. The defendant even following proper procedure for submitting the said information and the copies of the documents but he has not received the same.So under such circumstances if defendant has applied tot his Court for issuing direction to the Income Tax Department for producing the certified true copies of a particular document it cannot be said that the prayer of the defendant is premature. In my opinion, if the information asked for his available with the plaintiff then he should in fact supply the same but if the same is not available to him and it is only with Income Tax Department then the defendant is justified in asking for issuing directions to the Income Tax Department as the same is necessary and relevant for the present Respondent and would certainly help to settle the dispute correctly. Besides this even if such direction is issued to the Income Tax Department and documents which are in fact produced by the plaintiff to the Income Tax Department are brought on record, it cannot be said that prejudice is likely to be caused to the plaintiff. After all we cannot ignore the fact that this is a not a case where defendant no.3 was/is not at all concern with the

defendant no.9 company.

. Hence I pass the following order :

I. It is hereby directed that the Income Tax Department, Asstt.Commissioner of Income Tax 10(3), Ayakar Bhavan, Maharishi Karve Road, Mumbai-400 020,

a. to deposit in Court either the originals or certified true copies of the following documents in respect of the Khopoli Unit/division of Echjay Forgings Private Limited, having its Administrative Office at Honad Village, Khalapur Taluka, Dist. Raigad, P.O. Shilphata, Khopoli, Maharashtra 410 203, being Plaintiff No.9 Company for the year ended March 31, 2006 and March 31, 2007 :

i. Statements/declarations made by Sarvadaman Mansuklal Doshi being Plaintiff No.1 whereby Plaintiff No.1 has disclosed a huge amount of Undisclosed/ Unaccounted Income earned by the Khopoli Unit/Division of Echjay Forgings Private Limited, having its Administrative Office at Honad Village,Khalapur Taluka, Dist. Raigad, P.O. Shilphata, Khopoli, Maharashtra-410203, being Plaintiff No.9 Company;

ii. Provisional Profit & Loss account made by Sarvadaman Mansuklal Doshi, being Plaintiff No.1;

b. to give the following information in respect of the Khopoli Unit/Division of Echjay Forgings Private Limited, having its Administrative Office at Honad Village, Khalapur Taluka, Dist. Raigad, P.O. Shilphata, Khopoli Maharashtra 410 203, being Plaintiff No.9 Company for the year ended March 31, 2006 and March 31, 2007.

i. Details of the revenue expenses which have been treated as capital expenses by the Income Tax Authorities ;

ii. Amount of additional advance income tax paid by Plaintiff No.1 by reason of having disclosed the Undisclosed/Unaccounted Income of the Khopoli Unit/ Division of Echjay Forgings Private Limited, having its Administrative Office at Honad Village, Khalapur Taluka, Dist. Raigad, P.O. Shilphata Khopoli, Maharashtra 410 203, being Plaintiff No.9 Company and

iii Details of the manner in which Sarvadaman Mansuklal Doshi, being Plaintiff No.1 has brought the Undisclosed/Unaccounted Income of the Khopoli Unit/ Division of Echjay Forgings Private Limited, having its Administrative Office at Honad Village, Khalapur Taluka, Dist. Raigad, P.O. Shilphata, Khopoli, Maharashtra 410 203, being Plaintiff No.9

Company back into Plaintiff No.9 Company.

. The above documents be produced before this Court on 8-6-2007.

(S.R.SATHE,J.)

. Learned Advocate for the Plaintiff submits that the action above mentioned be stayed for 8 weeks.

. However, taking into consideration the nature of the order it is needless to say there is absolutely no necessity to stay the order.

. Adjourned to 08/06/2007.

(S.R. SATHE,J.)